

just as likely as not the Claimant is simply feeling the effects of the natural aging process. Therefore, the Claimant's request for benefits under the Workers Compensation Act is denied.¹

Claimant contends Judge Frobish erred. Claimant argues that the medical evidence presented at the preliminary hearing was uncontradicted that claimant's work activities had contributed to the pain and degenerative changes in her knees. Moreover, claimant argues, among other things, that there was no medical opinion presented at the hearing which would support the Judge's conclusion that claimant's bilateral knee and low back conditions were more likely due to the natural aging process and that respondent and its insurance carrier did not raise that as a defense. Consequently, claimant requests the Board to reverse the February 27, 2003 Order with instructions that claimant be awarded benefits.

Conversely, respondent and its insurance carrier contend the evidence presented at the preliminary hearing did not establish that claimant's injuries were related to her work. In addition, they contend that claimant failed to prove that she provided timely notice of her accidental injuries. Accordingly, respondent and its insurance carrier argue that the Board should affirm the February 27, 2003 Order denying claimant's request for benefits.

The only issues before the Board on this appeal are:

- (1) Did claimant's work activities either cause, aggravate, accelerate or intensify a preexisting condition in her back or knees?
- (2) If so, did claimant provide respondent with timely notice of her accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, for preliminary hearing purposes the Board finds and concludes, as follows:

Claimant is 60 years old and began working at Wesley hospital in 1985. Claimant started out in the housekeeping department but eventually she became a cook and later a cafeteria server. Approximately a year before the February 2003 preliminary hearing, the hospital sold its restaurant and cafeteria operations to respondent. Although the record is not clear when claimant became a cafeteria server, she had been performing those duties at least four or five months before testifying at the preliminary hearing.

¹ February 27, 2003 Order.

In approximately October 2002, claimant began experiencing symptoms in her left knee. As she continued to work, claimant's symptoms increased and by December 2002 she was experiencing pain in both knees and her low back. On December 9, 2002, claimant sought treatment from Dr. Sam Heck.

Claimant worked for respondent 40 hours per week until approximately December 9, 2002, when Dr. Heck restricted her to only four to six hours per day. In a February 24, 2003 letter to claimant's attorney, the doctor attributed claimant's pain and degenerative condition in her knees to her work. The doctor wrote, in part:

It is in my opinion that Shirleen *[sic]* Logwood's work activity *[sic]* has contributed to the pain and degenerative changes of her knees. From her personal history, her everyday activity does not appear to be a significant contributor. Therefore, this should be treated through work comp with appropriate occupational restrictions.

The doctor's opinion that claimant's work activities aggravated the bilateral degenerative joint disease in her knees was based upon the understanding that claimant's job duties required prolonged standing and walking on hard surfaces, as described in claimant's preliminary hearing testimony.

Dr. Heck's medical opinion that claimant's work activities contributed to her degenerative joint disease is uncontradicted.

The Board finds that the evidence establishes that claimant's work activities contributed to the pain and degenerative changes in her knees. Accordingly, the Board finds and concludes that claimant has sustained an accidental injury arising out of and in the course of employment with respondent.

The Board also concludes that claimant provided respondent with timely notice of the accidental injury as required by K.S.A. 44-520. Claimant testified that when she took Dr. Heck's December 9, 2002 work restriction slip to her supervisor, she told her supervisor that the doctor believed that claimant's work activities were causing her lower extremities problems. That testimony is credible and persuasive.

Based upon the above findings and conclusions, claimant is entitled to benefits under the Workers Compensation Act. The February 27, 2003 Order should be reversed.

WHEREFORE, the Board reverses the February 27, 2003 Order and remands this proceeding to the Judge for further proceedings consistent with the above findings that claimant sustained personal injury by accident arising out of and in the course of

employment with respondent and that claimant provided respondent with timely notice of that accident. The Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

c: Dennis L. Phelps, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation